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UN Genocide Convention — June 1986

Background: The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;

- Causing serious bodily or mental harm to members of the group;

- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- Forcibly transferring children of the group to another group."

The convention provides for punishment of offenders, either by the country in which the offense is committed or by an international tribunal. Punishable acts include: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide.

Early history: The convention was unanimously adopted by the UN General Assembly in 1948. The US was one of the first countries to initial, on December 11, 1948, two days after the convention was opened for signature. Approval of the convention by the UN General Assembly is only the first step; thereafter each country must formally express its consent to be bound. Up to now, 96 countries have done so.

According to the US Constitution, the Senate must "advise and consent" to all treaties. In June 1949, President Truman asked the Senate to approve the genocide convention; no action was taken at that time. Presidents Kennedy, Johnson, Nixon, Ford, Carter, and Reagan each requested Senate approval. The Senate Foreign Relations Committee reported the convention favorably to the Senate in 1970, 1971, 1973, 1976, and 1984, but the Senate did not pass on it. In September 1984, President Reagan stated, "Our failure to ratify this treaty...has opened the United States to unnecessary criticism. Ratification...would reaffirm...the fundamental and timeless American commitment to human rights."

Principal reasons for controversy: For 37 years the convention met with considerable opposition. Various opponents were concerned that:

- The convention would supersede the US Constitution;
- Acts against political groups were not made criminal offenses;
- The convention would be enforced in ways detrimental to the US.

Recent developments: In 1976, the American Bar Association changed from opposition to support, marking a turning point. That year the

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Senate Foreign Relations Committee reported the bill to the Senate attaching three understandings and a declaration that allayed the ABA's concerns. (These were included in the final text of the ratification resolution).

In addition to other problems that eventually were addressed in 1986, some Senators continued to express concern that the convention did not protect political groups. To speak to this, in February 1986 the Senate passed a resolution urging the President to seek adoption of an amendment to protect political groups once the US became a party to the convention. The Reagan Administration also helped achieve a consensus by agreeing to a compromise on the World Court reservation.

Current US status: The Senate approved the genocide convention on February 19, 1986. Final objections were satisfied by the following provisos, some of which had been formulated in 1976:

- Before any dispute to which the US is a party may be submitted to the World Court under the convention, the specific consent of the US is required in each case (reservation);

- Nothing in the convention requires or authorizes legislation or other action by the US prohibited by the US Constitution as interpreted by the US (reservation);

- The term "intent to destroy in whole or in part" means "specific intent to destroy in whole or substantial part" (understanding);

- The term "mental harm" means permanent impairment of mental faculties through drugs, torture or similar techniques (understanding);

- The pledge to grant extradition extends only to acts which are criminal under the laws of requesting and requested state and nothing in the convention affects the right of any state to try before its own courts any of its nationals for acts committed outside a state (understanding);

- Acts in the course of armed conflicts committed without specific intent required by the convention are not sufficient to constitute genocide (understanding);

- The US reserves the right to effect its participation in an international penal tribunal only by a treaty entered into specifically for that purpose with the Senate's advice and consent.

- The President will not deposit the instrument of ratification until after the implementing legislation has been enacted.

The convention is not self-executing--it requires additional legislation. The US will not become a party until 90 days after such legislation is completed, the President has signed the ratification document, and it has been deposited with the UN Secretary General.